

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

400I0520

## CONFERENCE COMMITTEE ENGROSSED NO. **SB** **63** - 03/07/2003

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to repeal the sales tax exemption for certain interstate  
2 telecommunication services and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45-6.1 be amended to read as follows:

5 10-45-6.1. Except as provided in § 10-45-6.2, there is hereby imposed ~~on amounts paid for~~  
6 ~~local telephone services, toll telephone services, and teletypewriter services,~~ a tax of four percent  
7 ~~of the amount so paid. The taxes imposed by this section shall be paid by the person paying for~~  
8 ~~the services. If a bill is rendered the taxpayer for local telephone service or toll telephone service,~~  
9 ~~the amount on which the tax with respect to such services shall be based shall be the sum of all~~  
10 ~~charges for such services included in the bill; except that if a person who renders the bill groups~~  
11 ~~individual items for purposes of rendering the bill and computing the tax, then the amount on~~  
12 ~~which the tax for each such group shall be based shall be the sum of all items within that group,~~  
13 ~~and the tax on the remaining items not included in any such group shall be based on the charge~~  
14 ~~for each item separately. If the tax imposed by this section with respect to toll telephone service~~  
15 ~~is paid by inserting coins in coin-operated telephones, the tax shall be computed to the nearest~~



~~multiple of five cents, except that, where the tax is midway between multiples of five cents, the next higher multiple shall apply. The tax so paid shall be remitted at the same time as the sales tax imposed by this chapter upon the gross receipts from providing any telecommunication service that originates or terminates in this state and that is billed or charged to a service address in this state, or that both originates and terminates in this state. However, the tax imposed by this section does not apply to:~~

- (1) Any eight hundred or eight hundred type service unless the service both originates and terminates in this state;
- (2) Any sale of a telecommunication service to a provider of telecommunication services, including access service, for use in providing any telecommunication service; or
- (3) Any sale of interstate telecommunication service provided to a call center that has been certified by the secretary of revenue to meet the criterion established in section 2 of this Act and the call center has provided to the telecommunications service provider an exemption certificate issued by the secretary indicating that it meets the criterion.

If a call center uses an exemption certificate to purchase services not meeting the criterion established in section 2 of this Act, the call center is liable for the applicable tax, penalty, and interest.

For the purposes of this section, the term, telecommunication service, is the transmission of signs, signals, writings, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, electromagnetic means.

Section 2. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

As used in section 1 of this Act, the term, call center, means any physical location where

1 telephone calls are placed, or received, for the purpose of making sales, marketing, customer  
2 service, or technical support. The term does not include:

3 (1) Any location where telephone calls are primarily placed to, or received from, the same  
4 taxpayer, or affiliates of the same taxpayer, that owns or operates the location; or

5 (2) Any insurance, real estate, or brokerage company.

6 Section 3. That § 10-45-12.1 be amended to read as follows:

7 10-45-12.1. The following services enumerated in the Standard Industrial Classification  
8 Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and  
9 Budget, Office of the President are exempt from the provisions of this chapter: health services  
10 (major group 80); educational services (major group 82) except schools and educational services  
11 not elsewhere classified (industry no. 8299); social services (major group 83); agricultural  
12 services (major group 07) except veterinarian services (group no. 074) and animal specialty  
13 services, except veterinary (industry no. 0752); forestry services (group no. 085); radio and  
14 television broadcasting (group no. 483); railroad transportation (major group 40); local and  
15 suburban passenger transportation (group no. 411) except limousine services; school buses  
16 (group no. 415); farm product warehousing and storage (industry no. 4221); establishments  
17 primarily engaged in transportation on rivers and canals (group no. 444); establishments primarily  
18 engaged in air transportation, certified carriers (group no. 451); establishments primarily engaged  
19 in air transportation, noncertified carriers (group no. 452) except chartered flights (industry no.  
20 4522) and airplane, helicopter, balloon, dirigible, and blimp rides for amusement or sightseeing;  
21 pipe lines, except natural gas (major group 46); arrangement of passenger transportation (group  
22 no. 472); arrangement of transportation of freight and cargo (group no. 473); rental of railroad  
23 cars (group no. 474); water supply (industry no. 4941); sewerage systems (industry no. 4952);  
24 security brokers, dealers and flotation companies (group no. 621); commodity contracts brokers

1 and dealers (group no. 622); credit counseling services provided by individual and family social  
2 services (industry no. 8322); construction services (division C) except industry no. 1752 and  
3 locksmiths and locksmith shops; consumer credit reporting agencies, mercantile reporting  
4 agencies, and adjustment and collection agencies (group no. 732), if the debt was incurred  
5 out-of-state and the client does not reside within the state. The following are also specifically  
6 exempt from the provisions of this chapter: financial services of institutions subject to tax under  
7 chapter 10-43 including loan origination fees, late payment charges, nonsufficient fund check  
8 charges, stop payment charges, safe deposit box rent, exchange charges, commission on travelers  
9 checks, charges for administration of trusts, interest charges, and points charged on loans;  
10 commissions earned or service fees paid by an insurance company to an agent or representative  
11 for the sale of a policy; services of brokers and agents licensed under Title 47; the sale of trading  
12 stamps; rentals of motor vehicles as defined by § 32-5-1 leased under a single contract for more  
13 than twenty-eight days; advertising services; services provided by any corporation to another  
14 corporation which is centrally assessed having identical ownership and services provided by any  
15 corporation to a wholly owned subsidiary which is centrally assessed; continuing education  
16 programs; tutoring; vocational counseling, except rehabilitation counseling; and motion picture  
17 rentals to a commercially operated theater primarily engaged in the exhibition of motion pictures;  
18 ~~and charges made by a telecommunications company for the origination, transmission, switching,~~  
19 ~~reception, or termination of an interstate telephone or telegraph communication.~~

20 Section 4. That § 10-45-6.2 be amended to read as follows:

21 10-45-6.2. There is hereby imposed a tax of four percent upon the gross receipts of mobile  
22 telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that  
23 originate and terminate in the same state and are billed to a customer with a place of primary use  
24 in this state or are deemed to have originated or been received in this state and to be billed or

1 charged to a service address in this state if the customer's place of primary use is located in this  
2 state regardless of where the service actually originates or terminates. Notwithstanding any other  
3 provision of this chapter and for purposes of the tax imposed by this section, the tax imposed  
4 upon mobile telecommunication services shall be administered in accordance with 4 U.S.C.  
5 §§ 116-126 as in effect on July 28, 2000.

6 Section 5. Whereas, this Act is necessary for the support of the state government and its  
7 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
8 force and effect from and after May 1, 2003.